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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,342	12/03/2003	Alfred Yoakim	88265-7072	8608
29157	7590	04/18/2006	EXAMINER	
BELL, BOYD & LLOYD LLC			KUHN, SARAH LOUISE	
P. O. BOX 1135			ART UNIT	
CHICAGO, IL 60690-1135			PAPER NUMBER	

1761

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,342

Applicant(s)

YOAKIM ET AL.

Examiner

Sarah L. Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,10-12,14-16,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,10-12,14-16,19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Objections

Claim 1 is objected to because of the following informalities: "between 0.1 to 3 bar" should be changed to "between 0.1 and 3 bar." Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1, 2, 4, 5, 11, 12, 14-16, 19, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "capsule" in the last line. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

Claims 1, 2, 4, 5, 11, 12, 14, 16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fond, U.S. Patent 5,897,899, in view of Favre, U.S. Patent 4,136,202.

In regard to claims 1, 2, and 20, Fond discloses a sealed cartridge comprising first and second sheet materials joined to form a space there between, and ground

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coffee (3) located in the space between the sheets, with the first material (2) designed to admit water into the cartridge for extraction of the beverage from the coffee, and the second material (4) having properties to retain water or beverage in the cartridge until an overpressure of above 1 bar, and particularly within the range of 2-15 bar, is achieved at which overpressure the second material will rupture under the sole effect of the rise in pressure inside the cartridge to allow the extracted beverage to exit the cartridge (claim 1 and column 5, lines 38-45).

Many of the embodiments disclosed in Fond do not require that the relief surface elements puncture or tear the tear face (see column 8, lines 32-39; column 9, lines 4-16; column 10, lines 11-16 and 37-41). Therefore, it is interpreted that the tear face tears by effect of the fluid overpressure alone. Since the cartridge of Fond functions in the same way as that of Applicant, it would have been expected that the cartridge of Fond would also result in a delay effect in the passage of the beverage through the second sheet after water has been admitted into the cartridge, absent a showing to the contrary by clear and convincing evidence.

Fond discloses that there is no need for score lines in the cartridge (see abstract, "which need have no marks for weakening"), but this does suggest that the inclusion of score lines would interfere with the functioning of the cartridge. The use of score lines was notoriously well known in the art, as evidenced by Favre (column 2, lines 24-25). It would have therefore been obvious to include score lines in the cartridge of Fond in order to better control the tearing pattern of the tear face and also to reduce the overpressure required to break the tear face.

In regard to claim 4, Fond discloses the first sheet (2) being made of a non-woven fiber or a semi-rigid material having a density within the claimed range that will permit water to enter the cartridge by gravity flow (column 6, lines 23-40).

In regard to claim 5, Fond discloses the first material (2) being aluminum with a thickness of at least 20 microns that is configured to allow puncturing by piercing means (20) in order for water to be admitted into the cartridge (column 6, lines 24-26).

In regard to claims 11 and 12, Fond discloses the materials of the first (2) and second (4) sheets be made of oxygen barrier materials or non-oxygen barrier materials (column 6, lines 10-40).

In regard to claim 14, Fond discloses a cartridge that holds 5-20 grams of coffee, wherein the first (2) and second (4) sheet materials have polygonal shape (figures 1-3, column 5, lines 23-36).

In regard to claim 16, Fond discloses the first (2) and second (4) materials each being non-woven material (column 6, lines 23-40 and column 5, lines 49-59).

Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fond in view of Favre, as applied above, in further view of Illy, U.S. Patent 4,253,385.

In regard to claim 10, Fond does not disclose a removable cover. Illy discloses a coffee cartridge comprising first and second sheet materials joined to form a space there between for holding coffee (21) and further discloses a removable cover (column

2, lines 1-2) for the cartridge. It would therefore be obvious to make the cover of the cartridge of Fond removable in order to make the cartridge reuseable.

In regard to claim 15, Fond discloses the second material (4) being filter paper (column 5, lines 60-65), but does not disclose the first material (2) being filter paper. However, it was well known to one of ordinary skill in the art to use filter paper as both the first and second materials when making a coffee cartridge, as evidenced by Illy (column 2, lines 10-13). Therefore, it would have been obvious to use filter paper as the first material, as well as the second material, since such a material is conventional in the field.

Response to Arguments

Applicant's arguments filed March 14, 2006, have been fully considered but they are not persuasive. Applicant argues that Fond fails to disclose or suggest a capsule with a second sheet material that allows the beverage to pass through it by effect of the fluid pressure alone. However, as addressed above, many of the embodiments disclosed in Fond do not require that the relief surface elements puncture or tear the tear face (see column 8, lines 32-39; column 9, lines 4-16; column 10, lines 11-16 and 37-41). Therefore, it is interpreted that the tear face tears by effect of the fluid overpressure alone. Since the cartridge of Fond functions in the same way as that of Applicant, it would have been expected that the cartridge of Fond would also result in a delay effect in the passage of the beverage through the second sheet after water has

been admitted into the cartridge, absent a showing to the contrary by clear and convincing evidence.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK



CAROLYN PADEN 1761
PRIMARY EXAMINER 4-1406